

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO				CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY)	
TO: CITY COUNCIL		FROM (ORIGINATING DEPARTMENT): Comptroller		DATE: 05/30/2013	
SUBJECT: Dissolution of San Diego Data Processing Corporation.					
PRIMARY CONTACT (NAME, PHONE): Ken Whitfield,(619) 236-6162, MS-6A			SECONDARY CONTACT (NAME, PHONE): ,		
COMPLETE FOR ACCOUNTING PURPOSES					
FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
COST SUMMARY (IF APPLICABLE):					
ROUTING AND APPROVALS					
CONTRIBUTORS/REVIEWERS:		APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	
Liaison Office		ORIG DEPT.	Whitfield, Ken	5/31/2013	
		CFO			
		DEPUTY CHIEF			
		COO			
		CITY ATTORNEY			
		COUNCIL PRESIDENTS OFFICE			
PREPARATION OF:	<input checked="" type="checkbox"/> RESOLUTIONS	<input type="checkbox"/> ORDINANCE(S)	<input type="checkbox"/> AGREEMENT(S)	<input type="checkbox"/> DEED(S)	
Authorizing the dissolution of San Diego Data Processing Corporation.					
STAFF RECOMMENDATIONS: Move the item forward to City Council for a vote on the resolution to dissolve the corporation.					
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)					
COUNCIL DISTRICT(S):		Citywide			

COMMUNITY AREA(S):	
ENVIRONMENTAL IMPACT:	This activity is not a "project" and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).
CITY CLERK INSTRUCTIONS:	

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 05/30/2013

ORIGINATING DEPARTMENT: Comptroller

SUBJECT: Dissolution of San Diego Data Processing Corporation.

COUNCIL DISTRICT(S): Citywide

CONTACT/PHONE NUMBER: Ken Whitfield/(619) 236-6162, MS-6A

DESCRIPTIVE SUMMARY OF ITEM:

The purpose of this item is to authorize the dissolution of San Diego Data Processing Corporation (SDDPC), a 501 c 3 non-profit corporation of which the City of San Diego is the sole member. SDDPC has been providing Information Technology services to the City since its inception in 1979.

STAFF RECOMMENDATION:

Move the item forward to City Council for a vote on the resolution to dissolve the corporation.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

The purpose of this item is to discuss and move forward for a City Council vote the dissolution of San Diego Data Processing Corporation (SDDPC). SDDPC is a 501 c 3 non-profit corporation of which the City of San Diego is the sole member of the corporation. SDDPC has been providing Information Technology services to the City since its inception in 1979. In order to dissolve SDDPC, the member (City) needs an affirmative dissolution vote. Dissolution papers along with a dissolution plan, is then submitted to the State Attorney General's Office for processing. There is a 120 day waiting period for the State Attorney General's Office to process the dissolution which allows adequate notice to creditors.

In the spring of 2012, the City Council voted to award the four towers of IT computing services to CGI, ATOS and Xerox. SDDPC will have transitioned the remaining IT services to the new service providers by August 16, 2013. It is anticipated that final dissolution of the corporation will be in November 2013 after all other legal and financial closeout activities have been completed. The majority of the remaining DPC employees will be released on July 1, 2013 and all employees will be released by the end of September 2013. In May 2013, the SDDPC board of directors affirmatively voted to dissolve the corporation pending the approval of the City.

FISCAL CONSIDERATIONS:

The remaining assets of SDDPC will be distributed to the City of San Diego upon final dissolution of the corporation as certified by the State Attorney General's Office. The value of the assets are projected to be approximately \$18 million with approximately \$6 million in cash.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee): Briefly discussed at Budget and Finance Committee meetings on March 27 and May 8, 2013.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS: N/A

Whitfield, Ken

Originating Department

Deputy Chief/Chief Operating Officer

RESOLUTIONS OF THE BOARD OF DIRECTORS
OF SAN DIEGO DATA PROCESSING CORPORATION, INC.
REGARDING WINDING-UP AND DISSOLUTION

WHEREAS, the members of the Board of Directors ("Board") of San Diego Data Processing Corporation, Inc., a California nonprofit benefit corporation ("Corporation") have determined that it is the best interests of this Corporation to: (i) elect to wind-up and voluntarily dissolve this Corporation in accordance with Section 6610 et seq. of the California Corporations Code; (ii) designate the City of San Diego, a municipal corporation and the Sole Statutory Member of the Corporation, ("City") as the distributee of the assets of this Corporation remaining after this Corporation has paid its known debts and liabilities to the extent its assets permit; and (iii) designate the City as the custodian of the Corporation's records after wind-up and dissolution.

NOW, THEREFORE, IT IS RESOLVED:

1. That the dissolution of this Corporation in accordance with the resolutions set forth herein is hereby approved, contingent upon the approval of these resolutions by the City as the Corporation's Sole Statutory Member.
2. That the officers of this Corporation are authorized and directed to mail or cause to be mailed promptly to all known creditors of this Corporation, if any, and to all known persons having claims against this Corporation, if any, whose addresses appear on the records of this Corporation, and to the California Attorney General, written notice of the commencement of proceedings to wind up and dissolve the Corporation, as required by Section 6613(c) of the California Corporations Code.
3. That the officers of the Corporation shall wind up the Corporation's operational affairs, which shall include the termination or mutually agreed upon assignment to the City of any of the Corporation's outstanding contracts, including vendor contracts, contracts to provide services to third parties, and leases.
4. That this Board shall adopt retirement plan amendment resolutions ending the Corporation's retirement plans ("Plans") and discontinuing funding of the Plans effective on or before the date of final dissolution of the Corporation, and shall adopt a resolution allowing the Corporation to recover moneys in the Corporation's Forfeiture Account with Fidelity Investments.
5. That the officers of the Corporation shall work with Fidelity Investments to notify Plan participants, wrap up the Plans and Fidelity contracts, distribute Plan assets on or before the date of final dissolution of the Corporation, and locate nonresponsive Plan participants and force out/ rollover balances as necessary.

6. That the officers of the Corporation shall work with the Corporation's voluntary disability insurance provider to close and convert the Corporation's voluntary disability insurance plan, as necessary.
7. That the Corporation's obligations to provide COBRA continuation coverage to qualified beneficiaries after dissolution will pass to the City after the termination of the Corporation's health plans at the time of dissolution, and City shall discharge any such legal obligations to qualified beneficiaries.
8. That the officers of the Corporation shall pay or provide for all other remaining liabilities of the Corporation.
9. That the officers of the Corporation shall pay the following estimated expenses on behalf of the Corporation:

Category	Estimate	Description
Insurance <i>Directors and Officers liability Insurance provider to be selected</i>	\$390,000	Estimated cost of Directors & Officers and Errors & Omissions liability insurance tail coverage policies
Legal Fees <i>Procopio, Cory, Hargreaves & Savitch LLP 530 B Street, Suite 2200 San Diego, CA 92101</i> <i>Foley & Lardner LLP 402 W. Broadway, Suite 2100 San Diego, CA 92101</i> <i>Paul, Hastings, Janofsky & Walker LLP 695 Town Center Drive, Suite 1700 Costa Mesa, CA 92626</i>	\$100,000	Estimated legal fees associated with winding up and dissolution of Corporation, closure of retirement plans and distributions
Accountant <i>Macias Gini & O'Connell LLP 225 Broadway, Suite 1750 San Diego, CA 92101</i>	\$47,000	Estimated accounting fees associated with winding up and dissolution of Corporation
Document Storage <i>Iron Mountain P.O. Box 601002 Pasadena, CA 91189</i>	\$12,000	Estimated cost for six months of continued document storage expenses prior to complete transfer to City as custodian
Facilities Costs	\$608,000	Estimated expenses for leased space, utilities, janitorial,

		maintenance and other services associated with Corporation-owned real property from date of commencement of dissolution process to final dissolution
Transition of Data Center Operations to City Vendor	\$178,000	Estimated expenses for data center support activities, including technical consulting and services required to keep operations functional through final vendor transition
Internal Systems	\$212,000	Estimated expenses for internal desktop, network, server and web site support activities, including technical consulting and services, required for maintaining internal tools, systems and connectivity prior to final transition
Internal Business and Financial Support	\$72,000	Estimated expenses for internal business and financial systems support activities, including technical consulting and services required for posting transactions, generating reports and distributing assets
Employee Group 1: employees required for transition and shut-down of technical (data center) operations (37 employees for 2 months)	\$672,000	Estimated compensation and benefits from date of commencement of dissolution process to date of termination of employment
Employee Group 2: employees required for business operations shut-down and fiscal year-end audit (8 employees for 5 months)	\$383,000	Estimated compensation and benefits from date of commencement of dissolution process to date of termination of employment
Employee Group 3: employees required for shut-down of operations, asset distribution, and activities to wind-up and dissolve Corporation (5 employees for 8 months)	\$603,000	Estimated compensation and benefits from date of commencement of dissolution process to date of termination of employment

10. That after the known debts and liabilities of this Corporation have been paid to the extent of this Corporation's assets, the proper officers of this Corporation are hereby authorized to distribute this Corporation's remaining assets and receivables to the City, provided however, that the officers of this Corporation shall provide or cause to be provided notice of such distribution to the California Attorney General at least twenty (20) days in advance of the distribution in accordance with Section 5913 of the California Corporations Code, and that such distribution shall be made only after the Corporation receives from the Attorney General a formal, written acknowledgment of receipt of the Statutory Notice that the State does not object to the distribution or require any further action by the Corporation. An itemized list of the Corporation's anticipated remaining assets and receivables after the payment of its known debts, liabilities and expenses is set forth in Exhibit A.
11. That upon final dissolution of the Corporation, the Corporation's officers and directors will be indemnified and held harmless by the City against any and all claims, demands, liabilities, obligations, losses and expenses, including reasonable attorneys' fees, arising from events, acts or omissions related to the Corporation not otherwise covered by the Corporation's own insurance. The City shall agree to be substituted for and assume all obligations of the Corporation under any contracts mutually agreed upon assigned to the City as part of the wind-up of the Corporation's operational affairs, and the City further agrees to perform for the benefit of Corporation and any and all third parties to which Corporation is liable any obligation under any such mutually agreed upon contract transferred to the City.
12. That the officers of this Corporation are authorized and directed to file a Certificate of Election to Wind Up and Dissolve with the California Secretary of State, and to file a copy thereof with the California Attorney General, evidencing the Corporation's election to wind up and dissolve, in accordance with Section 6611 of the California Corporations Code.
13. That the City shall be designated as the custodian of the Corporation's records to comply with all applicable retention requirements, and the officers of this Corporation shall work with the City to transfer records to the appropriate City personnel prior to final wind-up and dissolution of this Corporation.
14. That the actions necessary for carrying out the dissolution of the Corporation shall be commenced as soon as practicable after approval of these resolutions by the City as the Corporation's Sole Statutory Member, and the dissolution shall be completed as soon as practicable.
15. That this Corporation's officers and directors are authorized to do or cause to be done all other acts which are deemed necessary to effectuate and to consummate the voluntary dissolution of this Corporation.

I, CHRISTOPHER H. GOODMAN do hereby certify that the foregoing is a true and correct copy of the resolutions that were duly adopted by the Board of Directors of San Diego Data Processing Corporation at meeting thereof duly called, noticed and held on May 2, 2013, and that it was so adopted by the following vote:

AYES: 5

NOES: 0

ABSENT: 0

ABSTENTIONS: 0

Christopher H. Goodman

_____, Secretary CHAIR

Exhibit A

Description of Assets	Value	Method of Valuation	Distributee
Cash on deposit at Bank of the West, San Diego, CA	\$6,400,000	Anticipated value after payment of liabilities and expenses	City of San Diego
Lease deposit held by Civic Center Associates, LLC for 2,825 rentable SF at 1200 Third Avenue, Suite 400, San Diego, CA 92101	\$3,836.80	Carrying value as of March 31, 2013	City of San Diego
Land, building and building improvements located at 5975 Santa Fe Street, San Diego, CA 92109	\$4,200,000	Market value per appraisal as of December 31, 2010	City of San Diego
Land, building and building improvements located at 5965 Santa Fe Street, San Diego, CA 92109	\$3,850,000	Market value per appraisal as of December 31, 2010	City of San Diego
Telecom equipment (PBX, routers, switches, cabling) at HQ location (5975 & 5965 Santa Fe Street)	\$740,186	Carrying value as of March 31, 2013	City of San Diego
Telecom equipment (PBX, routers, switches, cabling) at various City of San Diego premises locations	\$701,213	Carrying value as of March 31, 2013	City of San Diego
Data center computer hardware (servers, data storage/security) at HQ location (5975 & 5965 Santa Fe Street)	\$180,032	Carrying value as of March 31, 2013	City of San Diego
Data center computer hardware (servers, data storage/security) at various City of San Diego premises locations	\$53,288	Carrying value as of March 31, 2013	City of San Diego
Data center computer software (database, data storage/security, system backups) at HQ location (5975 & 5965 Santa Fe Street)	\$66,426	Carrying value as of March 31, 2013	City of San Diego

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: May 8, 2012

TO: Honorable Mayor and City Council

FROM: City Attorney

SUBJECT: Dissolution of a Nonprofit Corporation

INTRODUCTION

In 1979, the City of San Diego outsourced many of its information technology (IT) functions to a newly formed California nonprofit corporation, San Diego Data Processing Corporation (SDDPC). The City is SDDPC's sole member and acts through the City Council.¹ On September 8, 2009, the City issued a Request for Proposals (RFP) for the help desk and desktop support service functions that SDDPC was providing to the City, and on June 29, 2010, the City executed a contract with En Pointe Technologies, Inc. (EnPointe), for provision of those services. On April 15, 2011, the City issued RFP # 10015345-11-Z for IT Services (IT Services RFP), which included many of the services that SDDPC provides to the City, and also included the help desk and desktop support services that EnPointe currently provides. The IT services in the RFP included four services areas: (1) Data Center Services, (2) Network Services, including Current Data Network, Current Voice Network, and Future Converged Data/Voice Network, (3) Application Development and Maintenance Services, and (4) Service Desk and Desktop Support Services. Vendors were allowed to submit a proposal for one or more of the service areas.

During the April 18, 2012 meeting of the Rules, Open Government & Intergovernmental Relations Committee, there was discussion regarding approval of two contracts that would be issued pursuant to the IT Services RFP, and, because award of those contracts could impact SDDPC, the Committee requested additional information related to the process for the potential dissolution of SDDPC. This memorandum provides a high level overview of the process any California nonprofit corporation would follow regarding dissolution.

¹ Article V, Sections 1 and 2 of the Sixth Amended and Restated Bylaws of San Diego Data Processing Corporation.

QUESTIONS PRESENTED

1. Can the City terminate its contractual relationship with SDDPC?
2. What is the process for voluntarily winding up and dissolving SDDPC?
3. What will happen with SDDPC's assets if the Corporation is dissolved?

SHORT ANSWERS

1. Yes, the City can terminate its contractual relationship with SDDPC.
2. The California Corporations Code sets forth the process to dissolve a nonprofit corporation such as SDDPC. The process includes accounting for all assets and liabilities, satisfying debts and liabilities, providing certain notifications to employees, terminating or assigning leases and other contracts, and filing final tax returns.
3. Any assets that SDDPC has at the time of dissolution would, after payment of liabilities, under the terms of SDDPC's Articles of Incorporation, be distributed to the City.

ANALYSIS

I. THE CITY CAN TERMINATE ITS CONTRACTUAL RELATIONSHIP WITH SDDPC.

A non-exclusive Master Services Agreement (MSA) governs the services that SDDPC currently provides to the City. Sections 6.1 and 6.2 of the MSA provide that the Agreement is for an initial three-year term (which expires on April 9, 2013), with two, one-year renewal options. Section 6.2.1 of the MSA states that, by providing 120 days notice to SDDPC, the City may terminate for convenience all or part of the services.

Although the City previously conducted the majority of its IT procurement through SDDPC, in June 2011 the City notified SDDPC that, as of January 1, 2012, it no longer would be funding SDDPC for procurement services and would effectively be terminating those services. City staff is now performing the IT procurement function. Therefore, termination of the MSA would not impact future IT procurement.

II. PROCESS FOR WINDING UP SDDPC'S AFFAIRS AND DISSOLVING THE CORPORATION.

As described above, the City Council acts as the sole member of SDDPC. If the City Council wanted to dissolve SDDPC, it would vote on the matter and, if dissolution were approved, the corporation would then need to complete a Certificate of Dissolution. Cal. Corp. Code §§ 6610, 6611. Dissolution would also include a written notice of the commencement of the proceeding

for voluntary winding up to all known creditors and claimants whose addresses appear on the records of the corporation and to the Attorney General. Cal. Corp. Code § 6613(c). The following is a brief outline of the steps necessary to dissolve a nonprofit corporation. Corporate counsel for SDDPC would advise SDDPC during each step of the dissolution process to ensure compliance with the California Corporations Code and the corporation's bylaws.

A. Steps to Wind Up SDDPC's Affairs.

In general terms, the process of voluntarily winding up a nonprofit corporation would necessitate the following steps:

1. Account for all Assets and Liabilities

The corporation would need to make an accounting of all of its assets and liabilities. Assets would include such items as real estate, tangible personal property, intellectual property rights, cash on hand, inventory, if any, and any outstanding accounts receivable. Liabilities could include such items as any claims against the corporation for contractual obligations, wages, loans, unpaid taxes (withholding taxes for final pay and unrelated business income taxes for the corporation's final fiscal period, and any outstanding state tax obligations), and any other debt of the corporation. Cal. Corp. Code § 6613.

2. Satisfy Debts and Liabilities

Any of the corporation's debts or liabilities would need to be paid or otherwise satisfied prior to dissolution. The corporation's Board of Directors would then need to determine that all its known debts and liabilities had been paid or adequately provided for. Cal. Corp. Code § 6713(a). This process is described in additional detail in Section II.B. of this Memorandum.

3. WARN Act Notices

The federal Worker Adjustment and Retraining Notification Act (The WARN Act), 29 USC §§ 2101-2109, requires employers of more than 100 employees to provide at least 60 days notice prior to closing a site where 50 or more employees will lose their employment during a period of 30 days. California has similar state law requirements. *See* Cal. Lab. Code §§ 1400-1408. The applicability of the WARN Act requirements would need to be determined during the winding up process.

4. Insurance Plans

Insurance plans would need to be terminated and adequate notice of termination of any health care plan would need to be provided. If individual employees were terminated during the winding up process, it is possible that the Consolidated Omnibus Budget Reconciliation Act (COBRA) would require that the employees be provided with notice of their right to pay to continue group health benefits for a limited period of time.

5. Wind Up Retirement Plans

Prior to dissolution, the corporation's trustee for any applicable corporate retirement plan would need to provide notice and appropriate distributions to employees as required under the plans and The Employee Retirement Income Security Act of 1974 (ERISA) (Pub. L. 93-406, codified as 29 USCS § 1002).

6. Contracts

Contracts that would need to be terminated or otherwise assigned could include:

- a. Vendor contracts.²
- b. Contracts to provide services to third parties.³
- c. Leases for office equipment.

7. Tax Returns

The corporation would need to timely file its final tax return for the preceding taxable year. Cal. Corp. Code § 6615(a)(4).

B. Additional Steps Necessary to Dissolve SDDPC.

Section 6713(a) of the California Corporations Code provides that once "all the known debts and liabilities of a corporation in the process of winding up have been paid or adequately provided for, the board shall distribute all remaining corporate assets in the manner provided in Sections 6715 and 6716." Section 6715 provides that: "assets held by a corporation upon a valid condition requiring return, transfer, or conveyance, which condition has occurred or will occur by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with the condition." In the event no such conditions currently exist, Section 6716 would govern the distribution of any remaining assets. Section 6716(a) provides that: "all of a corporation's assets shall be disposed of on dissolution in conformity with its articles or bylaws subject to complying with the provisions of any trust under which such assets are held." As described in Section III of this Memorandum, the result would be that SDDPC's assets would be distributed to the City.

² In the present instance, these contracts would include SDDPC's contracts with third party vendors. The City has requested copies of all such contracts. The timing for termination of these contracts would depend on the terms of each contract and, for some contracts, the length of transition to new IT service providers. The City will follow standard industry procedures to negotiate any necessary transfer of contracts. The City is in the process of collecting information regarding termination of any contracts that would not otherwise terminate during the transition period.

³ In the present instance, the contracts for IT Services that the City would award under the IT Services RFP include provisions to allow public agencies that currently have contracts with SDDPC (including ARJIS, SANGIS, and SANDAG) to "piggyback" and receive the same terms that the City will receive. The City has requested copies of all contracts SDDPC has to serve third parties.

The distribution of SDDPC's assets to the City would be made either by: i) decree of the Superior Court of the County of San Diego upon petition of the "Attorney General or upon 30 days' notice to the Attorney General, by any person concerned in the dissolution," or ii) "without the decree of the superior court, subject to the rights of persons concerned in the dissolution, if the Attorney General makes a written waiver of objections to the disposition." Cal. Corp. Code §§ 6716(b), (c).

Upon the City's receipt of a letter from the Attorney General, either waiving objections to the proposed distribution of SDDPC's assets or confirming that SDDPC has no assets, then SDDPC would mail a final dissolution packet to the Secretary of State's Office. *See* Cal. Corp. Code § 6615 and Att'y Gen's Office, Cal. Dep't of Justice, Publ. No. CT-603, *General Guide for Dissolving a California Nonprofit Corporation* (2011).

Once the Certificate has been stamped by the Secretary of State, and all the assets have been distributed properly, SDDPC must mail the final dissolution packet to the Attorney General's Office. *See* Att'y Gen's Office, Cal. Dep't of Justice, Publ. No. CT-603, *General Guide for Dissolving a California Nonprofit Corporation* (2011).

III. SDDPC'S ASSETS AT THE TIME OF DISSOLUTION WOULD, UNDER THE TERMS OF SDDPC'S ARTICLES OF INCORPORATION, BE DISTRIBUTED TO THE CITY.

Article IV of SDDPC's Articles of Incorporation, as amended, contains the following language which provides that, upon dissolution, SDDPC's assets will be distributed to the City:

Upon the dissolution or winding up of the Corporation, its assets remaining after payment or provision for payment of all debts and liabilities of this Corporation shall be distributed to the City of San Diego, to be used solely for charitable purposes, or if the City of San Diego does not accept the assets or is not then in existence, to a nonprofit fund, foundation or corporation which is organized and operating exclusively for charitable purposes and which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

The word "charitable," as used in Article IV of SDDPC's bylaws, is defined in the Treasury Regulations to include:

Relief of the poor and distressed or of the underprivileged;
advancement of religion; advancement of education or science;
erection or maintenance of public buildings, monuments, or works;
lessening of the burdens of Government; and promotion of social

welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

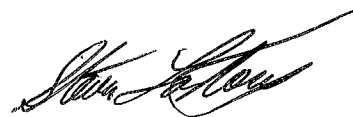
Treas. Reg. § 1.501(c)(3) - 1(d)(2) (as amended in 2008) ⁴

CONCLUSION

The City has the right to terminate the Master Services Agreement which governs its contractual relationship with SDDPC. The City, acting through the City Council as SDDPC's sole member, has the ability to dissolve the corporation. Upon dissolution and after satisfaction of outstanding liabilities, any remaining assets of the corporation would be distributed to the City. The City may only use these assets for charitable purposes as defined in the Treasury Regulations. This Memorandum provides a high level review of the process for winding up and dissolving SDDPC as SDDPC's corporate counsel will provide the detailed legal guidance to SDDPC to ensure SDDPC complies with all laws applicable to its dissolution.

JAN I. GOLDSMITH, CITY ATTORNEY

By



Steven R. Lastomirsky
Deputy City Attorney

SRL:mb

Doc.No:362985

cc: Andrea Tevlin, Independent Budget Analyst

Jeff Leveroni, Director of Dept of Information Technology

⁴ The full text of § 1.501(c)(3) – 1(d)(2) reads as follows: “*Charitable defined.* The term *charitable* is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of *charity* as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency. The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an *action* organization of any one of the types described in paragraph (c)(3) of this section.”



THE CITY OF SAN DIEGO

March 27, 2013

VIA CERTIFIED MAIL, RETURN RECEIPT

Mr. Larry Morgan, Executive Director
San Diego Data Processing Corporation
5975 Santa Fe Street
San Diego, CA 92109-1623

Dear Mr. Morgan:

Subject: Notice of Termination for Convenience of Master Services Agreement

This letter serves as notice, as provided for in Section 6.2.1 of the Master Services Agreement between the City of San Diego ("City") and San Diego Data Processing Corporation ("SDDPC") for Information Technology Services, dated as of April 9, 2010 ("Agreement") that the City is terminating the Agreement for convenience, including the termination of all Services (as defined in the Agreement). As also provided for in Section 6.2.1 of the Agreement, this termination for convenience will be effective one hundred twenty (120) days from SDDPC's receipt of this letter.

The City notes that it believes it already satisfied any notice requirement because Section 3.5 of the Agreement addresses what will happen if a contract for all or a portion of the Services is awarded to another vendor pursuant to an RFP. Specifically, Section 3.5 of the Agreement provides "[I]f the scope of Services previously provided by SDDPC is in any way reduced pursuant to an award to a third party under the RFP, SDDPC and the City shall meet and discuss a mutually agreed upon transition plan for the component of the Services in the RFP. City shall pay SDDPC for all Services reasonably provided up to the date of the award. In addition, City shall continue to pay for the Services reasonably provided by SDDPC during the transition period and any additional transition costs reasonably necessary to provide continuity of services during the transition." This process already took place for all of the Services. Nevertheless, because SDDPC's outside counsel provided advice to SDDPC that the 120 day notice of termination for convenience may be necessary, the City, as a formality, is providing SDDPC with such notice through this letter.

Sincerely,

Scott Chadwick
Interim Chief Operating Officer
City of San Diego

cc: Jeffrey Leveroni, Director of Information Technology, City of San Diego
Ken Whitfield, Comptroller, City of San Diego
Chris Goodman, Chair, SDDPC Board of Directors

